

LABOUR DEPARTMENT

The 26/30th October, 1970

No. 9299-I Lab-70/31329.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workman and the management of M/s Bonne Products, 12-E, Factory Area, Bahadurgarh.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No 93 of 1970

Between

SHRI RAJINDER KUMAR WORKMAN AND THE MANAGEMENT OF M/S BONNE
PRODUCTS, 12-E, FACTORY AREA, BAHADURGARH

Present :—

Shri Sagar Ram Gupta and Shri Rajinder Singh, for the workman.

Shri H. S. Saxana and Shri Desh Raj, for the management.

AWARD

Shri Rajinder Kumar was in the service of M/s Bonne Products, 12-E, Factory Area, Bahadurgarh, district Rohtak. According to the workman his service have been terminated without any reason from the afternoon of 14th January, 1970, and this gave rise to an industrial dispute. Accordingly the Governor of Haryana in exercise of the powers conferred by clause (d) of subsection (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,—*vide GOVERNMENT GAZETTE* notification No. ID/RK/159-A-70/14209, dated 15th May, 1970.

Whether termination of service of Shri Rajinder Kumar was Justified and in order. If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. The management have raised a number of technical pleas. On merits their position is that it was the workman who abandoned the service. The pleadings of the parties gave rise to the following issues :—

- (1) Whether the dispute referred to this Tribunal is not an Industrial Dispute and the reference is consequently without jurisdiction ?
- (2) Whether Shri Rajinder Kumar abandoned his service and therefore the dispute does not fall within the terms of reference ?
- (3) Whether the reference is not valid because no demand was submitted to the management.
- (4) Whether the statement of claim is not in accordance with law as it is not verified ?
- (5) Whether the reference is not valid because it has been referred at the instance of Bahadurgarh Potters & General Labour Union, Bahadurgarh, which is a General Union and not the union of the establishment of the management ?
- (6) If the above issues are found in favour of the workman whether termination of service of Shri Rajinder Kumar was justified and in order. If not, to what relief is he entitled ?

The parties have produced evidence in support of their respective contentions. I have heard their learned representative and have carefully gone through the evidence. My findings are as under :—

Issue No. 1.—The objection of the management is that there is only an individual dispute between Shri Rajinder Kumar workman and the management and there is no collective dispute between the workmen and the management and so there is no industrial dispute and the reference is therefore without jurisdiction. There is no force in this objection. Section 2A of the Industrial Disputes Act clearly provides that where

any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman then any dispute or difference that may arise between that workman and his employer which is connected with or arises out of such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no other workman or any union of workman is a party to the dispute. It is the assertion of the workman that the management have terminated his service. On the other hand the case of the management is that the workman had himself abandoned the service. The question as to whether the management have terminated the services of the workman or he has himself abandoned the service would be decided under the next issue. So far this issue is concerned it must be held that according to the assertion of the workman the present dispute falls under section 2A of the Industrial Disputes Act and the reference is valid. I find this issue in favour of the workman.

Issue No.—2 Shri Des Raj M. W. 1 Partner of the respondent concern has appeared as a witness in support of his contention that the workman himself left his job and the management did not terminate his service. The witness state that Shri Rajinder Kumar workman was employed in the respondent concern on 22nd November, 1969, as a Packer on Rs 75 per mensem and he worked only up to 12th January, 1970, and thereafter he absented himself without any intimation or making any application for leave. The witness further stated that after waiting for the workman for about a week a letter dated 19th January, 1970, copy Ex. M.W. 1/1 was sent to him under postal certificate in which it was pointed out to him that he was absenting himself from his duty without permission and that in case he was interested in the job he should resume his duties within 7 days. The witness stated that no reply was received from the workman and another letter dated 31st January, 1970, copy Ex. M. W. 1/3 was sent to him under postal certificate in which his attention was drawn to the previous letter sent to him and it was pointed out that since he was absenting himself from duty without permission and had not joined his duties in spite of the previous letter sent to him, his name was being struck off from the rolls. The witness stated that according to the information received by him the workman had joined evening College and had taken up service somewhere else.

The workman in his evidence has controverted the version of the management that he had abandoned his job and did not report for duty with effect from 13th January, 1970, onwards or that any communication was sent to him. His version is that he had worked in the respondent factory up to 13th January, 1970, and on 14th January, 1970, he was not permitted to do his duty without disclosing him any reason, so he immediately went to the office of the union and there made a complaint that the management had terminated his services without any reason.

The version of Shri Rajinder Kumar workman that on 14th January, 1970, he went to the office of the union and made a complaint regarding the wrongful termination of his service is corroborated by the evidence of Shri Rajinder Singh W. W. 1 President of Bahadurgarh Potteries and General Labour Union. In my opinion this version is true because it is corroborated by documentary evidence the authenticity of which is beyond doubt. The President of the union sent to the management a notice of demand dated 14th January, 1970, copy Ex. W. 1 under registered cover acknowledgement due in which it was pointed out that the management has terminated the service of their workman Shri Rajinder Kumar without any reason whatsoever and the management were called upon to reinstate the workman concerned. Shri Des Raj Partner of the respondent concern admits in his cross examination that the postal acknowledgement Ex. W. 2 under which the registered cover was received bear the signatures of his nephew who attends the factory but denied that the demands notice copy Ex. W. 1 was ever received by him. He clarified that probably the demand notice was not put up before him. If it had been a single lapse it might have been possible to appreciate the stand taken up by the management but we have as many as three more notices copies of which are marked Ex. W. 3, Ex. W. 4 and Ex. W. 5 which were despatched from the office of the Conciliation Officer and were addressed to the management. In the notice dated 21st January, 1970, copy Ex. W. 3 it was pointed out to the management that the demand notice dated 14th January, 1970, had been received from the Bahadurgarh Potteries and General Labour Union and the management were called upon to appear before the Conciliation Officer on 27th January, 1970, at 12 Noon for conciliation. In the notice dated 6th February 1970, copy Ex. W. 5 the attention of the management was drawn to the previous notice dated 21st January, 1970, and the management were called upon to appear on 15th February, 1970, at 11.30 a.m. In the notice dated 9th February, 1970, copy Ex. W. 4 the attention of the management was drawn to the notice dated 6th December, 1970, and were informed that they should appear on 16th February, 1970, instead of 15th February, 1970. Shri Des Raj Partner of the respondent concern admits in cross examination that he did receive a notice from the Labour Officer with regard to this case but explained that his wife was seriously ill and therefore he could not appear before the Conciliation Officer. He also admitted that he did not dispute any member of his staff to appear before the Labour Officer. Shri Des Raj explained that the condition of his wife was so serious that he could not attend to his business at all. It is not possible to accept this plea because as already pointed out the Conciliation Officer had sent as many as three notices to the management and the management did not choose to acknowledge any one of them. When Sh. Des Raj was confronted with all the three notices, he tried to avoid a direct admission or denial of the receipt of these notices and said that without looking at the record he could not say whether these notices had in fact been received in the office or not. This means that when the notice of reference of this industrial dispute was

received by the manager at even then they did not bother to look into their record and see whether the workman had been agitating on account of his alleged wrongful termination of services and the Conciliation Officer were issuing notices to them to appear before him and explain their point of view. The management first timely heard on the two letters which they are supposed to have sent to the workmen under postal certificate. According to the workman the address mentioned on these two letters is not correct and he did not receive any of these letters. The contention of the workmen appears to be correct because we have already seen that the workman had immediately contacted the union and complained to them that his services have been wrongfully terminated. In case the workman had received any letter intimating that he was absenting himself from duty, he would have at once protested and called upon the management to give him duty. In the face of the notice of demand which was sent to the management under registered cover acknowledgement due and the postal receipt of which is admitted and the three notices sent by the Conciliation Officer, it must be held that the workman was trying his best to go back to his work but the manager did not choose to take him back on duty. Under these circumstance it cannot be held that the workman had abandoned his job. I find this issue in favour of the workman.

Issue No. 3.—It has already been held while discussing issue No. 2 that a notice of demand dated 14th January 1970, copy Ex. W.1 was sent to the management under registered cover acknowledgement due and it is admitted that the postal acknowledgement bore the signatures of nephew of one of the partners and the nephew attends the factory. Under these circumstances it can not be held that no notice of demand on behalf of the workman was sent to the management. Accordingly I find this issue also in favour of the workman.

Issue No. 4.—The statement of claim filed in this case bear the signatures of Shri Rajinder Singh, President of the union. The Industrial Dispute Punjab Rules do not make any provision for filing a statement of claim and it is not provided that statement of claim should be verified. The reference can not be held to be invalid because the President of the union submitted a statement of claim on behalf of the workman in order to classify but the claim of the workman was. Accordingly I find this issue also in favour of the workman.

Issue No. 5.—It is pleaded that the present reference had been made at the instance of the Bahadurgarh Potteries and General Labour Union which is not a union of the establishment of the management. It may be so but under section 2A of the Industrial Disputes Act the workman aggrieved can himself raise a dispute and the President of the Bahadurgarh Potteries and General Labour Union which is duly registered is simply representing him. It can not be said that the reference is invalid simply because the workman is being represented by a Union which is not a union of the establishment of the respondent factory. I find this issue also in favour of the workman.

Issue No. 6.—In view of my findings on issue No. 2 it must be held that the termination of his services of Shri Rajinder Kumar was not justified and in order he is entitled to be reinstated with continuity of service. As regards his back wages it is stated on behalf of the management that the workman is not entitled to any back wages because he admits in his cross examination that when he was in the service of the respondent he had also joined evening classes of a college in Bahadurgarh. He further admits that he still a student of that college and when the management terminated his services he gave a certificate to the college authorities that he had taken up another job. The workman in his examination chief has stated that he was not doing any job although he tried to find one. In view of the contradictory versions given by the workmen it is not possible to hold that the workman was definitely out of job all the time and in my opinion therefore it would not be proper to allow him full back wages. The management should however pay some compensation to the workman for the wrongful termination of his services because the workman must have undergone some expense in fighting out his case. Taking into consideration all the circumstances I am of the opinion that the compensation of Rs 300 would meet the ends of justice. If the management do not reinstate the workman in compliance with the direction of the award full wages will have to be paid from the date of the award till it is implemented so far as the direction with regard to the reinstatement is concerned.

P. N. THUKRAL,

Dated 7th October, 1970.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1409, dated 26th October, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 7th October, 1970.